

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**June 17, 2014**

**The Rhode Island Ethics Commission held its 9th meeting of 2014 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday June 17, 2014, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.**

**\The following Commissioners were present:**

**Deborah M. Cerullo SSND, Vice Chair Mark B. Heffner  
John D. Lynch, Jr., Secretary Robert A. Salk  
Frederick K. Butler**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Education Coordinator/Staff Attorney; Staff Attorney Amy C. Stewart; and Commission Investigators Steven Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:04 a.m. the Vice Chair opened the meeting. The first order of business was:**

**Approval of minutes of the Open Session held on June 3, 2014.**

**Upon motion made by Commissioner Heffner and duly seconded by Commissioner Lynch, it was**

**VOTED: To approve minutes of the Open Session held on June 3, 2014.**

**AYES: John D. Lynch, Jr.; Frederick K. Butler; Mark B. Heffner; Deborah M. Cerullo.**

**ABSTENTIONS: Robert A. Salk.**

**The next order of business was:**

**Advisory Opinions.**

**The advisory opinions were based on draft advisory opinions prepared by Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:**

**Thomas R. O'Loughlin, the Director of Public Works for the Town of Middletown, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from preparing residential architectural**

plans and site plans, on his own time, for his friends who wish to renovate their private residences in Middletown.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Butler, the Petitioner stated that his official duties include granting permits for sewer tie-ins and drainage. He informed, however, that his friends' homes are already connected to the Town systems and would not require such permits. In response to Commissioner Heffner, the Petitioner stated that he would not appear before the Middletown Zoning Board or Building official on behalf of his friends. He further stated that his name would not be on the plans. Upon motion made by Commissioner Butler and duly seconded by Commissioner Heffner, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Thomas R. O'Loughlin, the Director of Public Works for the Town of Middletown.

The next advisory opinion was that of:

Ronald A. McKenna, the Treasurer and the Tax Collector for the Manville Fire District, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from seeking election to serve as a Fire Warden in the Manville Fire District and, if elected, from simultaneously holding all three positions.

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that he had been involved with the Fire District for thirty years. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Salk, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Ronald A. McKenna, the Treasurer and the Tax Collector for the Manville Fire District.**

**The final advisory opinion was that of:**

**W. Keith Burlingame, Esq., a member of the Rhode Island Fire Safety Code Board of Appeal and Review (“Fire Board”), requesting an advisory opinion regarding whether the Code of Ethics prohibits him from accepting an appointment to serve as the Executive Director of the Rhode Island Fire Safety Code Board of Appeal and Review.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present along with Peter N. Dennehy, Esq., Deputy Chief of Legal Services at the Rhode Island Department of Administration. Mr. Dennehy stated that he has been serving as interim legal counsel to the Fire Board since the former Executive Director, who was also the legal counsel, retired in December 2013. He informed that the Fire Board holds meetings**

every Tuesday and considers approximately six to ten cases each week. He stated that the Fire Code was extensively changed after the Station nightclub fire in 2003. He explained that as a result of these changes, the Fire Code is extremely complex and, thus, it is very difficult to find someone who is qualified to be the Executive Director.

He stated that he believed that there is a hardship to the Fire Board at this time if it cannot hire the Petitioner. In response to Vice Chair Cerullo, he clarified that he agrees with the staff that Regulation 5006 applies to this matter, but he reiterated that this set of circumstances, in his opinion, qualifies for an exception.

The Petitioner stated that since January he has been voluntarily performing the duties of the Executive Director. He added that during this time he has declined all clients in his private fire safety consulting work and would cease private practice in fire safety consulting if he is permitted to accept the position as Executive Director. In response to Commissioner Lynch, the Petitioner stated that he previously worked at the Attorney General's office. In response to Commissioner Heffner, the Petitioner explained that most firefighters do not have extensive knowledge of the fire code because code compliance falls under the jurisdiction of the local fire marshal.

Mr. Dennehy informed that the position of Executive Director to the Fire Board is a classified position for which the job specifications are set by the Department of Human Resources. In response to Vice Chair Cerullo, Mr. Dennehy stated that they considered alternatives

such as hiring a temporary director or having himself continue as legal counsel but in the end concluded that it was best to hire a permanent Executive Director according to the job specifications. He stated that the other two applicants did not have the necessary experience with the fire code, while the Petitioner's experience exceeded all of the qualifications. In response to Commissioner Salk, Mr. Dennehy replied that the Fire Board conducted a regional search and advertised the position in fire safety periodicals. He noted, however, that this position requires specific knowledge of the Rhode Island rules and regulations comprising the fire code so it was not surprising that the three applicants were all from Rhode Island.

In response to Commissioner Heffner, the Petitioner explained that the fire code was first created in 1968 as part of the General Laws. He stated that in 2003, after the Station nightclub fire, the General Assembly passed the Comprehensive Fire Safety Act which incorporated the national fire safety standards and applied them to new and existing construction by eliminating the grandfather clauses.

He stated that this resulted in thousands of older structures being forced into compliance. He explained that there are the national standards in the fire code and also 153 pages of Rhode Island local amendments because sometimes the national rules were unworkable in Rhode Island. He stated that the Fire Board acknowledges the economic effect on businesses and is willing to give property owners additional time to bring their structures into compliance.

**Upon motion made by Commissioner Lynch and duly seconded by Commissioner Butler, there was more discussion.**

**Commissioner Heffner stated that he sees a hardship here because the Station nightclub fire had a profound impact on the fire code and the resulting changes require an in-depth understanding of that code.**

**He stated that he did not doubt that the Petitioner was extraordinarily qualified. Commissioner Butler agreed and stated that removing the grandfather provisions in the fire code must have resulted in an enormous caseload for the Fire Board.**

**Commissioner Salk disagreed and stated that he believed the hardship was self-induced because they required the Executive Director to be a member of the Rhode Island Bar. Vice Chair Cerullo stated that she was troubled by the Fire Board's failure to anticipate the problem of succession when the former Executive Director retired. She questioned if anyone other than the Fire Board members would be qualified for the position. Mr. Dennehy responded that the Ethics Commission's concerns were well founded but this was a very specific position. He said that he would continue to work with the Fire Board in the next year and they will consider whether the position needs to be changed and if the resources for personnel changes are available.**

**Commissioner Lynch stated that he was comfortable granting a hardship exception for these circumstances and noted that it would**

not be setting a precedent for future hardship exceptions. He further stated that he was not troubled by the job specifications requiring the Executive Director to be an attorney who is licensed to practice law in Rhode Island. In response to Vice Chair Cerullo, Mr. Dennehy stated that the position was posted one time on the state's job vacancy website for a period of two weeks, which is standard procedure. He added that the position would only have been re-posted if they did not receive any applications.

Commissioner Heffner moved to approve the advisory opinion with two amendments added to the second full paragraph on page six relating to the representations relied upon for granting this hardship exception: 1) that the position of Executive Director is a classified position for which the job specifications are set by the Department of Human Resources; and 2) the fire code is a complex set of rules and regulations that have been applied to an increased numbers of structures since 2003. Commissioner Lynch withdrew his first motion. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Lynch, it was unanimously

**VOTED:** To issue an advisory opinion, as amended and attached hereto, to W. Keith Burlingame, Esq., a member of the Rhode Island Fire Safety Code Board of Appeal and Review.

Vice Chair Cerullo stated that she maintains her reservations about this exception and hopes that the Commission's concerns will be



relayed to the Fire Board.

[Reporter's Note: The advisory opinion request from the Honorable Joseph M. Polisena, the Mayor of the Town of Johnston, was withdrawn.]

The next order of business was:

Legislative Update.

Staff Attorney Gramitt first discussed Senate Bill 2585 Sub A as amended, the Quasi-public Corporation Transparency and Accountability Act. He reminded the Commission that this Bill initially required quasi-public corporations to enact their own internal codes of ethics that were consistent with the state Code of Ethics, but it failed to mention that these entities were, in fact, subject to the state Code. He stated that after he testified before the Senate Government Oversight Committee, the Bill was amended to note that quasi-public corporations were required "to comply with" the Code of Ethics, as well as the Access to Public Records Act and the Open Meetings Act. He explained that because "complying with" is not the same as being "subject to," he consulted with the Bill's sponsor, Senator James Sheehan, and drafted a floor amendment to substitute "be subject to" for "comply with." Senator Sheehan then introduced the floor amendment after the Bill was introduced, and the amended Bill passed the Senate. It has been referred to the House

## **Corporations Committee.**

**Next, Staff Attorney Gramitt discussed Senate Bill 2590, which was a simple technical amendment to a statute that requires the Secretary of State to provide ethics training to lobbyists on an annual basis. A typographical error was corrected to change the word “construction” to the word “instruction.” This Bill passed both chambers and was signed by Governor Chafee on June 11, 2014. He also noted that, in conjunction with the Secretary of State, he does indeed provide annual training to lobbyists each January.**

**Finally, Staff Attorney Gramitt discussed Senate Resolution 2824 Sub A as amended, a joint resolution to submit a constitutional amendment to the voters in November that would reestablish the jurisdiction of the Ethics Commission over members of the General Assembly. Staff Attorney Gramitt noted that this Resolution would restore the Commission’s pre-Irons jurisdiction but contained three changes this year that are viewed as a compromise. First, the amendment contains an exception allowing legislators to engage in discussion or debate, verbally or in writing, with full Speech in Debate protection. Second, the amendment “constitutionalizes” the appointment process for Commissioners to avoid any Separation of Powers arguments, and it adds two more Commissioners (one directly by the Governor and one nomination by the Senate Majority Leader) in order to create parity in the nomination process between the House of Representatives and the Senate. Finally, the**

amendment would provide that anyone found to be in violation of the Code of Ethics is entitled to a trial de novo in court. The Commission had previously supported passage of this Resolution. Attorney Gramitt reported that the Resolution had passed the Senate last Thursday and had been before the House Judiciary Committee last evening. He stated that he testified before the Committee and offered the Commission's support for passage. He informed that Common Cause of Rhode Island, the R.I. League of Women Voters and Operation Clean Government testified in opposition. The House Judiciary Committee recommended passage. Attorney Gramitt noted that this was likely the final week of the legislative session and that if the Resolution was scheduled for a House vote and passed, then the matter would go before the voters in November.

The next order of business was:

#### **Director's Report.**

Executive Director Willever reported that there were three (3) advisory opinions, two (2) complaints, and one (1) litigation matter pending. He stated that five (5) APRA requests were granted since the last meeting and all were completed within one (1) business day.

**The next order of business was:**

**Executive Session.**

**At 10:30 a.m., upon motion made by Commissioner Hefner and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

- 1. Motion to approve minutes of the Executive Session held on June 3, 2014, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**
- 2. In re: James R. Grundy, Complaint No. 2014-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 10:35 a.m. Upon motion made by Commissioner Butler and duly seconded by Commissioner Heffner, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on June 17, 2014.**

**The next order of business was:**

**Report on Actions Taken in Executive Session.**

Vice Chair Cerullo reported that the Commission unanimously voted to initially determine that the facts alleged in In re: James R. Grundy, Complaint No. 2014-2, if true, were sufficient to constitute a knowing and willful violation of the Code of Ethics and authorized an investigation.

[Reporter's Note: While in Executive Session, the Commission also approved the Executive Session minutes from June 3, 2014. The vote was as follows:

AYES: John D. Lynch, Jr.; Frederick K. Butler; Mark B. Heffner; Deborah M. Cerullo.

ABSTENTIONS: Robert A. Salk.]

The final order of business was New Business. There being none, at 10:37 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Heffner, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

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John D. Lynch, Jr.

**Secretary**